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## United States Senate

COMMITTEE ON SMALL BUSINESS

WASHINGTON, DC 20510-6350

July 26, 2000

Senator John McCain  
Chairman  
Senate Committee on Commerce, Science and  
Transportation  
508 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear John:

This letter requests that the Senate Committee on Commerce, Science and Transportation hold a hearing in the first session of the 107<sup>th</sup> Congress to explore whether it is appropriate to raise the maximum civil money penalty that may be levied by the Federal Trade Commission (Commission) for violations of section 5 of the Federal Trade Commission Act. The maximum civil penalty that the Commission may seek in a civil action under section 5 of the Federal Trade Commission Act is currently \$11,000 per violation, per day, although the Commission is required to increase this penalty at least once every four years to reflect inflation. Nevertheless, the current penalty has only increased \$1,000, from the \$10,000 maximum that was established as a threshold in the Federal Trade Commission Act in 1973. According to the Congressional Budget Office, if this threshold would have kept up with inflation, the present civil money penalty authority of the Commission under section 5 of the Federal Trade Commission Act would be \$36,500, per violation, per day.

Over the last year, the Senate Committee on Small Business (Committee) has held a series of hearings on the fraudulent and deceptive practices targeting small businesses. Witnesses at the latest hearing, held by the Committee on March 28, 2000, testified that the civil-money penalties that fraudulent retailers and telemarketers pay in connection with settlements they enter into with the Commission are considered merely a "cost of doing business" and do not act as an effective deterrent. While the Commission can refer for criminal contempt prosecution recidivists that breach consent decrees, the Committee received testimony that the Commission has not referred a substantial number of such cases. Accordingly, several witnesses, including Jodie Bernstein, Director of the Bureau of Consumer Protection at the Commission, addressed the potential of increasing the maximum civil-money penalty that the Commission is authorized by statute to obtain.

As a result of this testimony and the absence of a significant increase in the Commission's civil money penalty authority since 1973--almost three decades ago--I wrote to Chairman Pitofsky on April 27, 2000, requesting the Commission's views on whether such penalties should be increased. Attached for your reference is Chairman Pitofsky's reply, which

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recommends that Congress increase the Commission's penalty authority to \$25,000 per violation to make the Commission's authority more consistent with other federal agencies that carry out similar missions.

Thank you for your attention to this matter. I look forward to hearing from you and hope that you are able to accommodate this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Bond", written in a cursive style.

Christopher S. Bond  
Chairman